

3. The facts set forth in this affidavit are based on the following: my own personal knowledge, knowledge obtained from other individuals during my participation in this investigation, including other law enforcement officers, interviews of witnesses, my review of records related to this investigation, communication with others who have knowledge of the events and circumstances described herein, and information gained through my training and experience. This affidavit is intended to show only that there is sufficient probable cause of the requested criminal complaint and does not set forth all of my knowledge about this matter.

Applicable Law

4. 18 U.S.C. § 844(f)(1) makes it an offense to maliciously damage or destroy, or to attempt to damage or destroy, any building or real or personal property owned, possessed, or leased in whole or in part by the United States by means of fire or an explosive.

Statement of Probable Cause

5. Since on or about May 26, 2020, protesters have gathered daily in Portland, Oregon public areas including Lownsdale Square, Chapman Square, and Terry Schrunk Plaza. The Justice Center, which contains Portland Police Bureau's (PPB) Central Precinct and the Multnomah County Detention Center (MCDC), the Mark O. Hatfield United States Federal Courthouse, and the Edith Green-Wendell Wyatt Federal Building are directly across the street from those parks. The federal government owns the entire city block (Block #24) occupied by the Mark O. Hatfield Federal Courthouse. Easements have been granted for the sidewalks surrounding the facility. The property boundary extends past the sidewalks and into the streets surrounding the courthouse.

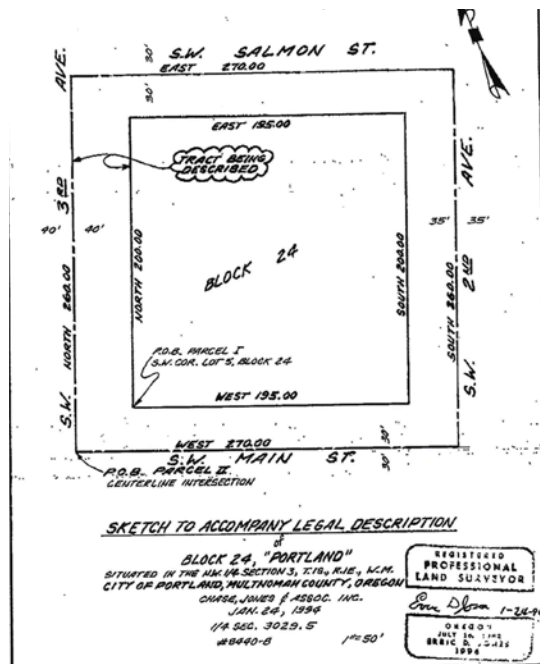
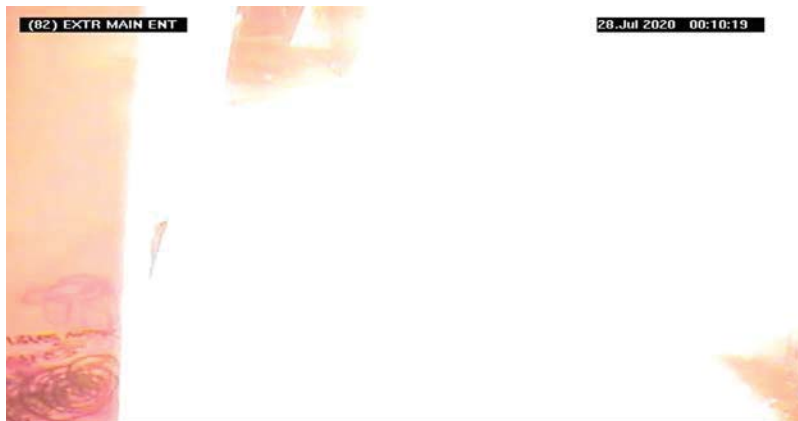


Figure 1: Diagram of Mark O. Hatfield Federal Courthouse

6. Daily protests have regularly been followed by nightly criminal activity in the form of vandalism, destruction of property, looting, arson, and assault. The Mark O. Hatfield Federal Courthouse has experienced significant damage to the façade and building fixtures since the onset of the protests. Additionally, mounted building security cameras and access control devices have been vandalized or stolen. Other federal properties in the area routinely being vandalized include the historic Pioneer Federal Courthouse, the Gus Solomon Courthouse, and the Edith Green Wendall Wyatt Federal Office Building. Department of Homeland Security (DHS) Federal Protective Services (FPS) law enforcement officers and inspectors, United States Marshals Service (USMS) Deputies, and other federal law enforcement officers working to protect the Mark O. Hatfield Federal Courthouse have been subjected to threats, aerial fireworks (including mortars), high intensity lasers targeting officers' eyes, thrown rocks, bottles, and balloons filled with paint, and vulgar language from demonstrators while performing their duties.

7. On July 28, 2020, surveillance footage by a camera labeled “(82) EXTR MAIN ENT” affixed to the Mark O. Hatfield Federal Courthouse captures an incendiary object or an object with energetic material. Upon review of the surveillance footage provided to me by USMS, I observed the incendiary object or object with energetic material entering the portico area of the Mark O. Hatfield Federal Courthouse at approximately 00:11:50 hours.¹ After the incendiary object or an object with energetic material enters the portico, the incendiary object or an object with energetic material proceeds to roll and/or bounce to the base of a protective wood covering that is affixed to the building. The western façade of the courthouse has been covered with a protective wood covering as the result of widespread vandalism, which includes shattered windows and extensive graffiti.

8. Approximately three seconds after the incendiary object or an object with energetic material enters the portico and rolls and/or bounces to the base of the wood covering, a large thermal event (“flash”) occurs which largely obscures the camera’s view of the portico:



¹ There is time discrepancy between the surveillance system and real time with the surveillance system being approximately 1 minute and 34 seconds behind real time. Therefore, while the incendiary object or an object with energetic material is seen at 00:11:50 hours, the surveillance system clock read 00:10:16 hours.

After the large thermal event (“flash “) subsides, flames are visible in two areas, with one area of flames against the protective wood covering.



9. At approximately 01:07 hours, law enforcement personnel positioned at the courthouse began collecting items of evidentiary value believed to be associated with this incident. In addition, at approximately 04:17 hours, a DHS FPS Special Agent collected another item of evidentiary value believed to be associated with this incident.

10. Pursuant to this incident, I, along with other ATF Special Agents, responded to the Mark O. Hatfield Courthouse. I obtained the following evidentiary items, further described below, from DHS FPS:

- a) Broken glass bottle
- b) Broken glass bottle
- c) Broken neck of glass bottle
- d) Charred plastic material
- e) Empty Quick Color spray paint can with missing top

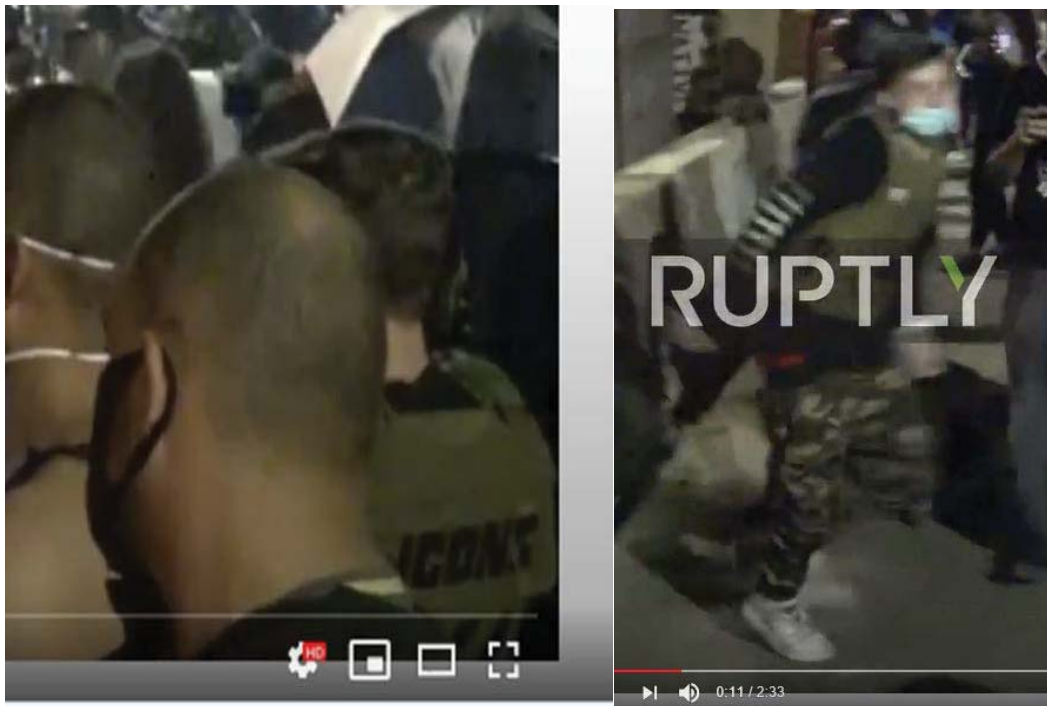
These items have been forwarded to the ATF Laboratory in Maryland for further analysis. In addition, at approximately 12:36 hours, I captured a photograph of the area where the incendiary object or an object with energetic material had previously landed. The photograph, depicted below, shows discoloration and/or smoke staining on the protective wood covering, below:



11. ATF reviewed social media posts from the night of the incident and located video of the incendiary object or an object with energetic material being thrown. The individual depicted throwing the incendiary object or an object with energetic material was a young, Caucasian male wearing a green colored vest with black colored diagonal stripes on the back and writing stating “ICONS.” The male was also wearing light colored lace-up tennis shoes, camouflage pants, and a dark colored, long sleeve shirt with light colored stripes on at least the

right sleeve. The male had dark colored hair pushed to the right side, and was wearing a mask covering over his face.

12. The livestream video depicting the male throwing the incendiary object or an object with energetic material was available via YouTube.com². A shorter version of the video was also available via YouTube.com³. Both videos were available via YouTube.com on July 28, 2020. ATF obtained the following screenshots of the individual from the videos mentioned above:



² Link available at: <https://www.youtube.com/watch?v=-t8xoNogO1g> [Long video with defendant at 2:20.]

³ Link available at: https://www.youtube.com/watch?v=dm_lZxmPxUU [Short video with defendant at beginning.]

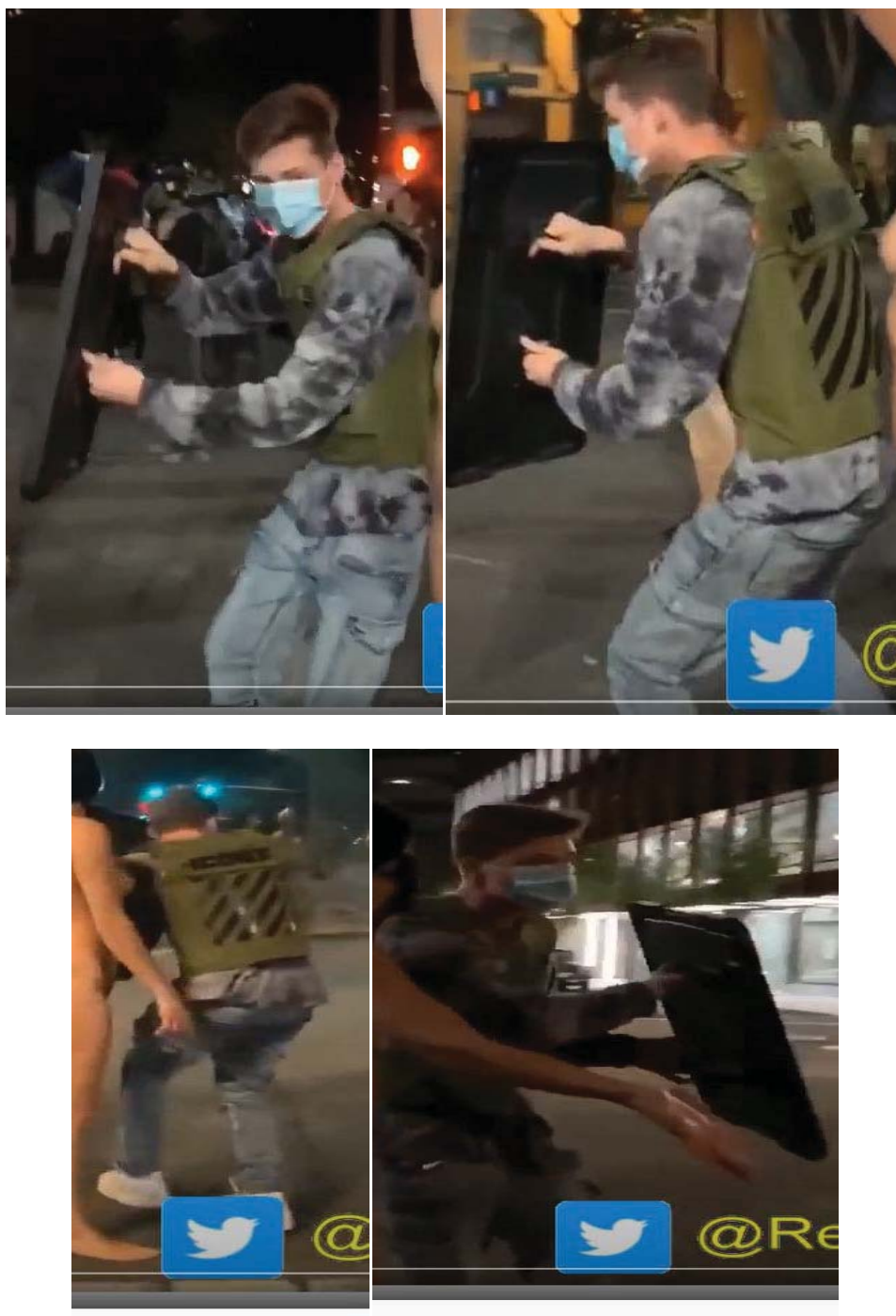


13. The first video captures the male in the above photographs walking toward the fence surrounding the Mark O. Hatfield Federal Courthouse (time stamp: approx. 2 min. 26 sec.). The male then goes to throw a burning object that ultimately travels over the fence surrounding the Mark O. Hatfield Federal Courthouse (2 min. 26 sec.). The male proceeds to watch through the fence in the direction the object was thrown. A thermal event (“flash”) occurs along with a loud, audible report (“boom”) (2 min. 31 sec.). The male then jumps in the air at approximately and subsequently departs the area (2 min. 33 sec.). The second short YouTube clip listed above captures the same incident; however, the video begins when the male is already at the fence, but has not yet thrown the incendiary object or destructive device.

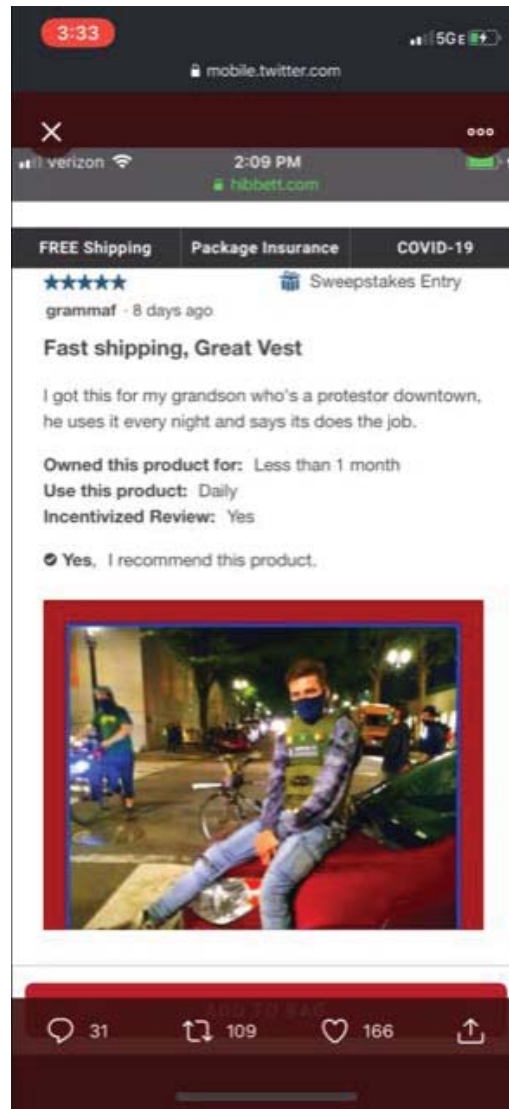
14. ATF observed the same male appearing in an additional protest related video on YouTube.com⁴, where he is seen wearing the same vest and holding a shield in front of a naked

⁴ Link available at: https://www.youtube.com/watch?v=6OFBPJHijNk&has_verified=1

woman. ATF obtained the following screenshots of the individual from the above-mentioned video, which was posted on July 18, 2020:



15. During the course of the investigation, I received information that was listed on the social media platform, Twitter, which depicted a product review by “grammaf” on hibbett.com for a vest that appeared to be sold via the hibbett.com website. The following image of that review was posted on July 28, 2020 by Twitter account A.F.⁵



As of July 31, 2020, I was unable to locate the above review on the hibbett.com website.

⁵ This Twitter account is known to me and can be provided upon request.

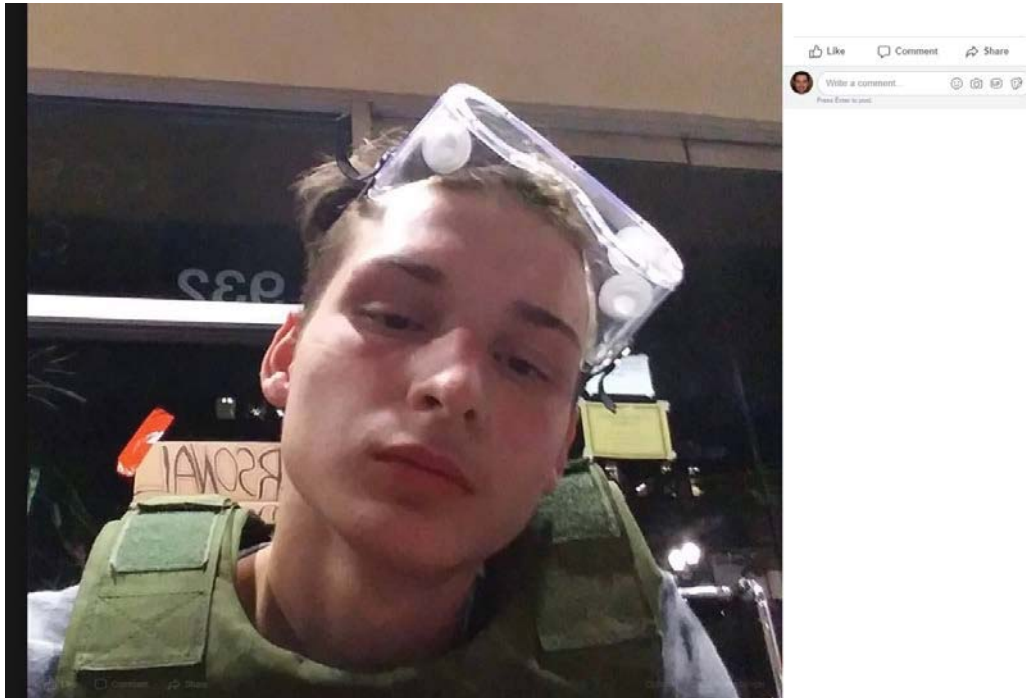
16. On July 30, 2020, ATF located the same photograph from the product review under the Facebook page, “R.S.”⁶:



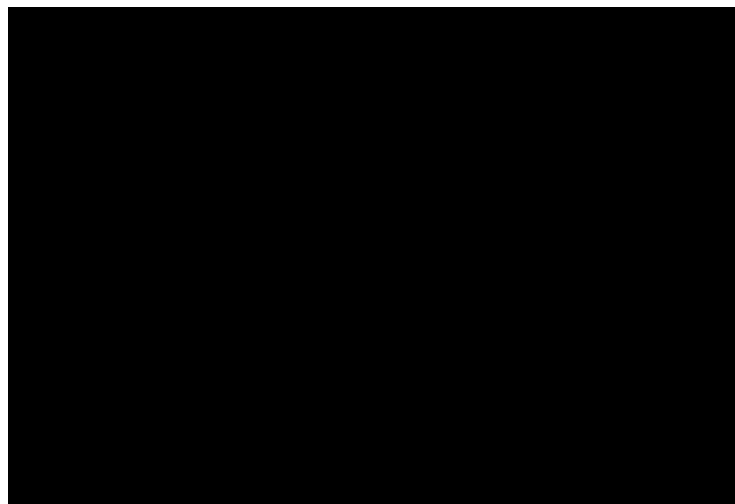
17. On July 30, 2020, utilizing the social media platform, Facebook, a USMS Deputy located a photograph of the male under the Facebook page “R.S.”. Upon further examination of an associated Facebook page, a USMS Deputy utilized a law enforcement database to identify the name “Gabriel S. Eckert.” Examination of another law enforcement database by another USMS Task Force Officer, provided an associated name of Gabriel E. AGARD-BERRYHILL

⁶ This Facebook account is known to me and can be provided upon request.

and felony parole information under that name. A USMS Deputy subsequently contacted a North Valley Parole and Probation Officer and submitted the following photograph, which was also located under the Facebook page “R.S.” to him:



The Parole and Probation Officer identified the individual in the above photograph as AGARD-BERRYHILL, and subsequently provided the following photograph of AGARD-BERRYHILL:



18. I spoke with the Parole and Probation Officer who informed me that AGARD-BERRYHILL advised the Officer that he “allegedly” was near the courthouse on July 28, 2020 and that an unknown individual provided an object to him. AGARD-BERRYHILL described the item as a piece of chalk or a substance of a similar size to a piece of chalk. The Parole and Probation Officer said the unknown individual told AGARD-BERRYHILL to light the item and throw it over the fence, which AGARD-BERRYHILL did. AGARD-BERRYHILL told the Officer it was a small device, yet it produced more of a concussion than AGARD-BERRYHILL was expecting.

19. On July 30, 2020, I received information from a USMS Deputy that the Parole and Probation Officer advised AGARD-BERRYHILL wanted to turn himself into custody. USMS subsequently responded to take AGARD-BERRYHILL into custody.

20. I interviewed AGARD-BERRYHILL with another ATF Special Agent after he had been taken into custody by USMS. Prior to arrival at the Mark O. Hatfield Federal Courthouse to be booked into USMS custody, USMS advised AGARD-BERRYHILL of his *Miranda Rights*, but did not further discuss a waiver of his rights. AGARD-BERRYHILL signed the signature line indicating he had been advised of his rights while in the presence of USMS. AGARD-BERRYHILL was then brought to Interview Room 5 where we with him. AGARD-BERRYHILL initially told us that he wanted an attorney; however, AGARD-BERRYHILL decided to waive his rights to an attorney and speak with us. AGARD-BERRYHILL was again advised of his *Miranda Rights* and he subsequently signed the Waiver of Rights section.

21. AGARD-BERRYHILL explained an unknown male in a ski mask gave him a “firework” and told him it was a little “strobe spinner” that would spin around and flash different colors. AGARD-BERRYHILL said he was going to set it off in the middle of the street, but the

unknown man told him not to do that because people have PTSD from the tear gas canisters and to throw it over the fence because there was not anyone over there. AGARD-BERRYHILL would also later state he threw the “firework” where he did because he knew no one was there and advised he did not intend to hurt anyone.

22. AGARD-BERRYHILL said he lit it, threw it, and when it blew up, it scared him so he jumped up and the adrenaline hit him. AGARD-BERRYHILL said he knew he was “fucked” when it blew up because it was not what the unknown male told him it was. AGARD-BERRYHILL and that is why he contacted his PO and turned himself in.

23. AGARD-BERRYHILL said he believes he was set up that night by the known male, but had not seen anything explode like the one he threw. AGARD-BERRYHILL said he has seen different mortars and sparklers. AGARD-BERRYHILL said the one he threw did not like a firework to him, but it was in firework packaging. AGARD-BERRYHILL described the device as yellow cardboard packaging with blue stripes, was the size of a small “V8” can, and had a green fuse in the middle of it. AGARD-BERRYHILL said there was no writing on the object.

24. AGARD-BERRYHILL stated he believed it was a “firework,” but did not realize what it was until it went off and did not know it was going to respond the way it did. AGARD-BERRYHILL said he had used a lot of “fireworks” in the past at it looked like a “firework” to him.

25. When asked whether his intent was to destroy anything or damage anything or if he threw the object in anger at the courthouse, AGARD-BERRYHILL responded he wanted to keep it so he could set it off with his friends somewhere, but the unknown male said he had to throw it or give it back.

26. AGARD-BERRYHILL stated his grandmother bought him the vest he was wearing in the video. At the time of the interview, AGARD-BERRYHILL stated he was wearing the same shirt from the night he threw the firework, but that it was inside out. AGARD-BERRYHILL proceeded to roll up the sleeve on his right arm to reveal lighter colored stripes on what would normally be the outside of the sleeve. AGARD-BERRYHILL stated the vest and the rest of his clothing from that night were scattered around at different locations.

Conclusion

27. Based on the foregoing, I have probable cause to believe that Gabriel E. AGARD-BERRYHILL attempted to maliciously damage the Mark O. Hatfield Federal Courthouse, a building wholly owned and used by the United States, by means of fire caused through the use of an incendiary object or an object with energetic material, in violation of 18 U.S.C § 844(f)(1). I therefore request that the Court issue a criminal complaint and arrest warrant charging AGARD-BERRYHILL with that offense.

//


//

//

28. Prior to being submitted to the Court, this affidavit, the accompanying complaint and the arrest warrant were all reviewed by Assistant United States Attorney (AUSA) Natalie Wight. AUSA Wight informed me that in her opinion, the affidavit is legally and factually sufficient to establish probable cause to support the issuance of the requested criminal complaint and arrest warrant.

/s/ Sworn by telephone
In accordance with Fed. R. Crim. P. 4.1
Amanda Johnson
ATF Special Agent

Sworn to by telephone or other reliable means in accordance with Fed. R. Crim. P. 4.1 at
12:31 ~~am~~ pm on July 31 2020.



HONORABLE JOLIE A. RUSSO
United States Magistrate Judge